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November 22, 2022

VIA ECF

Hon. Peggy Kuo
United States Magistrate Judge
United States District Court, Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

**Re: *Miller, et al. v. Arab Bank, PLC*, No. 18-cv-2192 (HG) (PK)
 Pam, et al. v. Arab Bank, PLC, No. 18-cv-4670 (HG) (PK)**

Dear Magistrate Judge Kuo:

We submit this joint letter in the above-referenced actions in response to the Court's September 22, 2022, Order directing the parties to "file a further joint status report by November 22, 2022 reporting on the progress of discovery and raising any issues which need to be addressed." The parties have conferred and offer the following update.

A. Miller and Pam Plaintiffs' Status Report

Pam Plaintiffs have completed their productions of English language ESI. *Miller* Plaintiffs have produced English language ESI for 29 of 31 custodians. On average, only 3% of the documents filtered through the search terms agreed upon with Arab Bank's counsel were responsive to Arab Bank's document requests. Plaintiffs' counsel believe that the relative paucity of responsive ESI is attributable to the fact that Arab Bank's document requests largely relate to time periods during which Plaintiffs did not use electronic means of communication or social media. The terror attacks at issue occurred between 2002-2004. Almost all of the ESI gathered from Plaintiffs' over 300 personal electronic devices and on-line accounts post-dates 2010. In Plaintiffs' counsels' view the effort expended to date to produce Plaintiffs' English-language ESI has been vastly disproportionate to the usefulness of the discovery obtained. Hence, Plaintiffs are seeking Arab Bank's agreement to limit in number and/or narrow in scope the search terms to be applied to Plaintiffs' Hebrew-language ESI.

Arab Bank has deposed five of the eight Plaintiffs who reside in the New York-New Jersey area. A sixth deposition is scheduled for today. Most of the Plaintiffs reside elsewhere in the United States or in Israel. Plaintiffs' counsel has proposed that the parties agree upon the locations for depositing those Plaintiffs as well as Arab Bank's officers and employees before scheduling depositions of any non-New York area Plaintiffs. As we have previously advised the



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Court, Plaintiffs cannot schedule depositions of Arab Bank witnesses until the pending bank secrecy cross motions have been resolved, because Arab Bank has indicated that its witnesses will decline to answer based on bank secrecy absent a contrary ruling by the Court.

Plaintiffs respectfully request the opportunity to provide a further discovery status report to the Court in 60 days.

B. Arab Bank's Status Report

Arab Bank's production of documents has been complete since June 7, 2021, subject to its pending motion for protective order. Plaintiffs continue to produce English language documents. At this time, Plaintiffs have not produced any Hebrew ESI. The parties are working to come to an agreement on the scope of Plaintiffs' Hebrew ESI production. Arab Bank has begun taking the depositions of New York area Plaintiffs. Arab Bank has taken five Plaintiff depositions. The parties are continuing to schedule the depositions of Plaintiffs that reside in the New York area. The parties are negotiating the location of depositions for Plaintiffs that do not reside in New York and New Jersey.

C. The Parties' Proposal for Addressing Outstanding Discovery Issues

The parties further agree to advise the Court should either party require the Court's intervention to resolve any dispute regarding the outstanding discovery or to report on any significant developments warranting the Court's immediate attention.

Sincerely,

A handwritten signature in blue ink, appearing to read 'BIM'.

Brett Ingerman